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NIAGARA BOTTLING, LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

11 NIAGARA BOTTLING, LLC, a  
Delaware limited liability company,

Plaintiff,  
vs.

14 ESSENCE WATER, INC., a California  
Corporation,

Defendant.

Case No. 8:17-cv-1438

# **COMPLAINT FOR PATENT INFRINGEMENT**

## **DEMAND FOR JURY TRIAL**

Date Action Filed:  
Trial Date:

Plaintiff NIAGARA BOTTLING, LLC (“Niagara”) as its complaint against  
Defendant ESSENCE WATER, INC. (“Essence”) alleges as follows:

## **NATURE OF THE CASE**

20       1. This action arises under 35 U.S.C. § 271 for Essence’s infringement of  
21 Niagara’s United States Patent No. 6,572,902 (“the ‘902 Patent”).

## **THE PARTIES**

23       2. Plaintiff Niagara is a Delaware limited liability company with its  
24 principal place of business at 2560 East Philadelphia Street, Ontario, California  
25 91761.

26       3. On information and belief, Defendant Essence is a corporation licensed  
27 to do business in California, with a primary place of business at 12802 Knott Street,  
28 Garden Grove, California, 92841.

**JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the Patent Laws  
 3 of the United States, Title 35, United States Code. This Court has jurisdiction over  
 4 the subject matter of this action pursuant to 28 U.S.C. § 1338(a) (action arising  
 5 under an Act of Congress relating to patents) and 28 U.S.C. § 1331 (federal  
 6 question).

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b)  
 8 and 28 U.S.C. § 1391(c).

9. Personal jurisdiction over Essence exists because Essence is a business  
 10 licensed to do business in California, having a primary place of business in Garden  
 11 Grove, California in this Judicial District. Personal jurisdiction over Essence also  
 12 exists because Essence sells and has sold and/or offers to sell in this judicial district  
 13 products that infringe the patent-in-suit.

**GENERAL ALLEGATIONS**

15. On June 3, 2003, United States Patent No. 6,572,902, entitled “Process  
 16 for Producing Improved Alkaline Drinking Water and the Product Produced  
 17 Thereby” (“the ‘902 Patent”), was duly and legally issued by the United States  
 18 Patent and Trademark Office (“USPTO”).

19. By assignment dated September 12, 2014, Niagara is the owner of all  
 20 rights, title, and interest in and to the ‘902 Patent, including all rights to recover for  
 21 any and all past infringement thereof. A true and correct copy of the ‘902 Patent is  
 22 attached hereto as **Exhibit A**.

23. Claim 12 of the ‘902 Patent is representative of the invention claimed  
 24 in the ‘902 Patent. That claim reads in full:

25. An improved alkaline drinking water product, comprising:  
 26. potable water which has been filtered and purified, with a total  
 27. dissolved solids of less than 10 parts per million, to which has  
 28. been added selected alkaline minerals, and which has then been

1                   electrolyzed to produce alkaline water having a pH in the range  
 2                   of 9-10, with a TDS (total dissolved solids) of 22-240 ppm and  
 3                   an alkalinity of 12-216 ppm.

4         10. As further stated in the ‘902 Patent, a drinking water having the  
 5         claimed properties is known to have certain health benefits. (See, e.g., ‘902 Patent  
 6         at 1:14-30.)

7                   **FIRST CAUSE OF ACTION**

8                   **(Infringement of the ‘902 Patent)**

9         11. Plaintiff re-alleges and incorporates the allegations of the preceding  
 10        paragraphs as if fully set forth herein.

11        12. Defendant Essence makes and sells the Essence ph10 drinking water  
 12        product (“Essence Product”), which is advertised by Essence as being purified,  
 13        having added alkaline minerals, and having a pH of 10.

14        13. Essence manufactures, sells, and offers to sell the Essence Product,  
 15        which meets each and every element of at least one claim of the ‘902 Patent. The  
 16        infringing acts take place throughout the United States, including in this Judicial  
 17        District. Essence has infringed and are infringing the ‘902 Patent, and will continue  
 18        to do unless enjoined by this Court. Attached hereto as **Exhibit B** is a collection of  
 19        advertisements from Essence’s website showing the Essence Product and Essence’s  
 20        claims regarding the product.

21        14. On September 28, 2015, Plaintiff sent a letter informing Essence that it  
 22        is selling products that are believed to infringe on the claims of the ‘902 Patent.  
 23        Despite Essence’s knowledge of the ‘902 Patent, Essence continued to infringe the  
 24        ‘902 Patent. Defendant Essence’s infringement of the ‘902 Patent has been and will  
 25        continue to be willful, wanton and deliberate with full knowledge and awareness of  
 26        Niagara’s patent rights unless enjoined by this Court.

27        15. Niagara has been damaged in an amount to be determined at trial, but  
 28        in an amount no less than a reasonable royalty. Niagara is also being irreparably

1 injured by Essence's infringing activities. Niagara will continue to be so damaged  
2 and irreparably injured unless such infringing activities are enjoined by this Court.

## PRAAYER

WHEREFORE, Plaintiff Niagara prays for the following relief:

5           a.     Preliminary and permanent injunctions pursuant to 35 U.S.C. § 283  
6 enjoining and restraining Defendant, its officers, directors, agents, employees,  
7 successors and assigns, and all those acting in privity or concert with Defendant,  
8 from further infringement of the ‘902 Patent;

9           b.     A judgment by the Court that Defendant has infringed and is infringing  
10 the ‘902 Patent;

11 c. An award of damages for infringement of the ‘902 Patent, together with  
12 prejudgment interest and costs, said damages to be trebled by reason of the  
13 intentional and willful nature of Defendant’s infringement, as provided by 35 U.S.C.  
14 § 284;

15 d. An award of Niagara's reasonable attorneys' fees pursuant to 35 U.S.C.  
16 § 285 in that this is an exceptional case;

17 e. Niagara's costs of suit herein; and

f. For such other and further relief as this Court deems just and proper.

20 || Dated: August 21, 2017

RUTAN & TUCKER, LLP  
BENJAMIN DEMING  
HANI SAYED

By: /s/ Benjamin Deming  
Benjamin Deming  
Attorneys for Plaintiff NIAGARA  
BOTTLING, LLC.

## **DEMAND FOR JURY TRIAL**

Plaintiff NIAGARA BOTTLING, LLC demands a jury trial on all issues triable to a jury in this matter.

Dated: August 21, 2017

RUTAN & TUCKER, LLP  
BENJAMIN DEMING  
HANI SAYED

By: /s/ Benjamin Deming  
Benjamin Deming  
Attorneys for Plaintiff NIAGARA  
BOTTLING, LLC.